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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,923	07/31/2003	Kevin W. Lang	13697-105006	9017

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EXAMINER

HENDRICKSON, STUART L

ART UNIT PAPER NUMBER

1754

DATE MAILED: 12/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/631,923

Applicant(s)

LEVIN ET AL.

Examiner

Stuart Hendrickson

Art Unit

1754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 4-21 and 26 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-25, 27 is/are allowed.
- 6) ☒ Claim(s) 1-3, 22, 28 and 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The amendment to claim 23 has changed the invention, and has made it related to claim 1. Accordingly, claims 1-3 and 22 (in so far as it depends upon claim 1) have been rejoined because these are deemed not to represent a patentably distinct invention. This determination may become relevant in the prosecution of divisional applications.

Claims 1-3, 22, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mathur et al. 4257817.

Mathur teaches a composition in column 4 having a density of 0.91; limestone is/contains calcium carbonate. This differs only in not teaching a tablet/granulated/processed material, however Mathur suggests this use in column 1. Thus, using the carbonate in animal feed, antacid, etc. would have been obvious to provide a carbonate bearing material.

Concerning claims 2 and 3, making a density greater than 1 (with fillers, binders, etc.) is an obvious expedient so that the tablet will sink in water and hence be in contact with water and hence dissolve faster for an anti-acid formulation. Concerning claims 28 and 29, it is not necessary for the Office to show the same process of making in a product-by-process claim.

Claims 1-3, 22, 28 and 29 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Chau et al. 5637313.

The reference, previously cited of record, teaches compositions of calcium carbonate. From the recitation of the viscous, dense materials, it appears that the claimed density is possessed. See especially example 1. Concerning claims 28 and 29, it is not necessary for the Office to show the same process of making in a product-by-process claim.

Claims 1-3, 22, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walsdorf et al. 6818228.

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The reference teaches in col. 6 a formulation of the claimed density which may contain calcium carbonate. Using carbonate form of calcium is an obvious expedient to provide a calcium source, desired by the reference. Concerning claims 28 and 29, it is not necessary for the Office to show the same process of making in a product-by-process claim.

Applicant's arguments with respect to claims above have been considered but are moot in view of the new ground(s) of rejection.

Claims 23-25, 27 are allowed. The order of inventor names is usually taken from the order listed on the Oath, and in general not changed absent a showing of sufficient reason.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication should be directed to examiner Hendrickson at telephone number (571) 272-1351.

A handwritten signature in black ink, appearing to read 'Stuart Hendrickson', is positioned above the printed name.

Stuart Hendrickson
examiner Art Unit 1754